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# In the Supreme Court of the United States

## OCTOBER TERM, 1939

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| STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA, *Complainants*, v. STATE OF ILLINOIS, and THE SANITARY DISTRICT OF CHICAGO, *Defendants.* | No. 2 Original |
| STATE OF MICHIGAN, *Complainant*, v. STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, et al., *Defendants.* | No. 3 Original |
| STATE OF NEW YORK, *Complainant*, v. STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, et al., *Defendants.* | No. 4 Original |

# BRIEF IN SUPPORT OF RETURN OF WISCONSIN, MINNESOTA, OHIO, PENNSYLVANIA, MICHIGAN AND NEW YORK AS RESPONDENTS, TO RULE TO SHOW CAUSE ISSUED ON APPLICATION OF THE STATE OF ILLINOIS, AS PETITIONER, FOR A TEMPORARY MODIFICATION OF PARAGRAPH 3 OF THE DECREE OF APRIL 21, 1930.

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**BRIEF IN SUPPORT OF RETURN OF WISCONSIN, MINNESOTA, OHIO, PENNSYLVANIA, MICHIGAN AND NEW YORK AS RESPONDENTS, TO RULE TO SHOW CAUSE ISSUED ON APPLICATION OF THE STATE OF ILLINOIS, AS PETITIONER, FOR A TEMPORARY MODIFICATION OF PARAGRAPH 3 OF THE DECREE OF APRIL 21, 1930.**

## I.

## HISTORY OF THE LITIGATION

The State of Wisconsin filed the first of these bills on July 14, 1922. The Wisconsin bill was amended on October 5, 1925, and the States of Minnesota, Ohio and

Pennsylvania became co-plaintiffs. The amended bill sought an injunction restraining the State of Illinois and the Sanitary District of Chicago from causing any water to be taken from the Great Lakes-St. Lawrence watershed in such manner as permanently to divert the same from that watershed. On April 8, 1926, the State of Michigan filed a separate bill for the same relief. On October 18, 1926, the State of New York filed a separate bill for the same relief. Subsequently the three suits were consolidated for the purpose of hearing. *Wisconsin v. Illinois,* 278 U. S. 367, 369-70.

Pursuant to a hearing upon the First Report of the Special Master, to whom the causes had been referred, this Court in a decision rendered on January 14, 1929, established the facts and declared the law governing the rights of the parties. *Wisconsin v. Illinois,* 278 U. S. 367. This Court held that the diversion of water beyond any negligible amount which might be necessary to maintain navigation in the Port of Chicago was illegal, but the restoration of the just rights of the complainants was made gradual rather than immediate "in order to avoid so far as might be possible pestilence and ruin with which the defendants have done much to confront themselves." *Wisconsin v. Illinois,* 281 U. S. 179, 196. Thereafter these causes were again referred to the Special Master to determine (1) the practical measures for the disposition of the sewage of the Sanitary District of Chicago through other means than Lake diversion; (2) the time required to complete such practical measures and place them in operation; (3) the reductions in diversion immediately practicable, and from time to time, pending the completion and placing in operation of such practical measures; and (4) the amount of the negligible diversions, if any, which might be eventually required to maintain navigation in the Port of Chicago. After the filing of the report of the Special Master

on re-reference and on March 14, 1930, this Court rendered its decision. *Wisconsin v. Illinois,* 281 U. S. 179.

On April 21, 1930, the decree of the Court was entered (281 U. S. 696). This decree provided, in part, that, (1) on and after July 1, 1930, the diversion of the waters of the Great Lakes-St. Lawrence system through the Chicago Drainage Canal should be reduced to an annual average of 6,500 cubic feet per second, in addition to domestic pumpage, (2) on and after December 31, 1935, this diversion should be reduced to 5,000 cubic feet per second, in addition to domestic pumpage, and (3) on and after December 31, 1938, this diversion should be reduced to 1,500 cubic feet per second, in addition to domestic pumpage.

In October 1932, the states of Wisconsin, Minnesota, Ohio and Michigan applied for the appointment of a Commissioner or other special officer to execute the decree of April 21, 1930 (281 U. S. 696) on behalf of and at the expense of the defendants. The respondents complained of the delay in the construction of the works and facilities embraced in the program of the Sanitary District of Chicago for the disposition of sewage so as to obviate danger to the health of the inhabitants of the District on the reductions in diversion on December 31, 1935 and December 31, 1938, in accordance with the decree, in the diversion of water from Lake Michigan through the Drainage Canal.

The court appointed Edward F. McClennen as Special Master to make summary inquiry and to report thereon to the court (287 U. S. 578). The Special Master proceeded accordingly and after full hearing submitted his report and recommendations. Upon that report the Supreme Court on May 22, 1933, rendered its opinion (See 289 U. S. 395). On the same day, the court enlarged the decree to provide in part that the State of Illinois is required to take all necessary steps to cause and secure the completion of adequate sewage disposal plants and

sewers, to the end that the reductions in diversion may be made at the times fixed in the decree.

## II.

## THE PETITION OF THE STATE OF ILLINOIS FILED JANUARY 15, 1940 FOR A MODIFICATION OF THE DECREE OF APRIL 21, 1930 WAS NOT FILED WITHIN THE TIME ALLOWED UNDER THE DECREE FOR MODIFICATION OF SAID DECREE WITH REFERENCE TO REDUCTION OF THE DIVERSION ADJUDGED TO BE ILLEGAL; AT DATE OF FILING SAID PETITION, SAID DECREE HAD BECOME FINAL AND *RES ADJUDICATA* AS BETWEEN THE PARTIES.

The petition of the State of Illinois was filed on January 15, 1940, under the provisions of paragraphs 6 and 7 of the decree entered in these causes on April 21, 1930 (281 U. S. 696) which paragraphs read as follows:

> "6. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or the progress of construction, or the methods of operation, or any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.
>
> "7. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above entitled

suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject-matter in controversy."

It seems clear from the record in these causes and the language of the decree that this Court intended to retain jurisdiction of these causes only until the final permanent reduction in diversion was made. It is manifest that the Court did not intend to retain jurisdiction of these causes indefinitely for all future time. The relief sought by respondents was and is a mandatory permanent injunction to enjoin petitioner and its agent, the Sanitary District of Chicago, from unlawfully diverting the waters of the Great Lakes-St. Lawrence Watershed through the Chicago Drainage Canal. This Court ruled that respondents were entitled to a decree "which will be effective in bringing that violation and the unwarranted part of the diversion to an end. But in keeping with the principles on which courts of equity condition their relief, and by way of avoiding any unnecessary hazard to the health of the people of that section" the decree was so framed as to accord to petitioner and its agent a reasonably practicable time within which to provide some other means of disposing of this sewage, the diversion to be reduced as the artificial disposition of the sewage increased, until it is entirely disposed of, when a final permanent operative and effective injunction should issue (278 U. S. 367). After a re-reference to the Special Master the Court on April 21, 1930 entered its decree fixing December 31, 1938 as the date when the final cessation of the illegal diversion was to be made (281 U. S. 696). Jurisdiction was of these causes retained by the Court only to see that the reductions in diversion were made by petitioner and its

agent in the amounts and at the times fixed in the decree. These causes were then closed finally when on January 1, 1939 the ultimate cessation of the diversion adjudged to be illegal became effective and was accepted by the Sanitary District of Chicago (See Final Semi-annual Report, Sanitary District, filed January 1, 1939, pp. 17-18).

Thus, at the date of filing of said petition, the decree of April 21, 1930 had become final and *res adjudicata* as between the parties in this as well as in all other respects and hence, the petition must be dismissed.

## III.

## THE DECREE OF APRIL 21, 1930, AS ENLARGED BY THE COURT ON MAY 22, 1933, IMPOSED A DUTY UPON PETITIONER AND ITS AGENT, THE SANITARY DISTRICT OF CHICAGO, TO REDUCE PROGRESSIVELY, AT STATED TIMES, THE DIVERSION OF WATER FROM LAKE MICHIGAN, AND CONCURRENTLY TO CONSTRUCT AND COMPLETE ADEQUATE SEWAGE TREATMENT FACILITIES FOR THE DISPOSITION OF THE SEWAGE OF THE AREA EMBRACED WITHIN THE SANITARY DISTRICT OF CHICAGO, SO AS TO PRECLUDE ANY GROUND OF OBJECTION ON THE PART OF THE STATE OR OF ANY OF ITS MUNICIPALITIES TO THE REDUCTION OF THE DIVERSION OF THE WATERS OF THE GREAT LAKES-ST. LAWRENCE SYSTEM OR WATERSHED TO THE EXTENT, AND AT THE TIMES AND IN THE MANNER PROVIDED IN THE DECREE.

### (a) *The Decisions of the Court Herein Clearly Define the Rights of Respondents and the Duty of Petitioner with Respect to Reductions in Diversion and the Construction, Completion and Operation of Sewage Treatment Works.*

The Court in holding that the respondent Great Lakes states were entitled to an injunction against the State of Illinois and the Sanitary District of Chicago to restrain the abstraction of the waters of the Great Lakes-St. Lawrence watershed through the Chicago Drainage Canal beyond what is necessary to keep up the normal

navigation in the Chicago river said: (*Wisconsin et al., v. Illinois, et al.* 278 U. S. 367, 420-421)

> "In increasing the diversion from 4,167 cubic feet a second to 8,500, the drainage district defied the authority of the national government resting in the Secretary of War. And in so far as the prior diversion was not for the purpose of maintaining navigation in the Chicago river, it was without any legal basis, because made for an inadmissable purpose. It, therefore, is the duty of this court by an appropriate decree to compel the reduction of the diversion to a point where it rests on a legal basis, and thus to restore the navigable capacity of Lake Michigan to its proper level. The sanitary district authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore, they can not now complain if an immediately heavy burden is placed upon the district because of their attitude and course. The situation requires the district to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the lake diversion.
>
> "Though the restoration of just rights to the complainants will be gradual instead of immediate, it must be continuous and as speedy as practicable, and must include everything that is essential to an effective project."

When the litigation again came before this Court after re-reference to Honorable (now Mr. Chief Justice) Charles Evans Hughes for the formulation of a decree, the Court, speaking through Mr. Justice Holmes, after referring to the previous decision by Mr. Chief Justice Taft said: (*Wisconsin v. Illinois*, 281 U. S. 179, 196)

> "'It was decided that the defendant State and its creature the Sanitary District were reducing the level of the Great Lakes, were inflicting great losses upon the complainants and were violating their rights, by diverting from Lake Michigan 8,500 or more cubic feet per second into the Chicago Drainage Canal for the purpose of diluting and carrying away the sewage of Chicago. The diversion of the water for that purpose was held illegal, but the restoration of the just rights of the complainants was made gradual rather than immediate in order to avoid so far as might be the possible pestilence and ruin with which the defendants have done much to confront themselves.'"

And again, the Court in holding the State of Illinois primarily responsible for the carrying out of the Court's decree pointed out: (*Wisconsin v. Illinois*, 281 U. S. 179, 197)

> "* * * It already has been decided that the defendants are doing a wrong to the complainants and that they must stop it. They must find out a way at their peril. We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defenses upon difficulties that it has itself created. If its constitution stands in the way of prompt action it must amend it or yield to an authority that is paramount to the State.'"

When this matter again came before the Court on October 3, 1932, after the states of Wisconsin, Minnesota, Ohio and Michigan had invited the attention of this Court to the circumstance that the facts then before the Court through the report of the Special Master on the 1929 Rereference and the Semi-annual reports filed by the Sani-

tary District of Chicago disclosed that the general over-all or ratable performance by the petitioner and its agent, the Sanitary District, under the decree had been and was grossly inadequate; that without the further intervention and aid of this Court to secure to respondents the rights heretofore adjudged to them, the arrival of the dates fixed by the decree for the intermediate and ultimate restoration of respondents' rights would inevitably be coincident with a default by the petitioner and the Sanitary District of Chicago.

The respondents in their application of October 3, 1932, and supporting brief urged that the facts therein recited from the records of this Court established that unless the respondents were able to secure the Court's aid in removing the obstacles which had already modified as to time the relief to which they are entitled, these respondents will be in exactly the same situation in 1935 and in 1938 that they were when the decree was entered on April 21, 1930. The Court then appointed a Special Master, Honorable Edward F. McClennen, to make inquiry and to submit a report thereon to the Court.

This Court in considering the Report of the Special Master, Honorable Edward F. McClennen, on the 1933 Rereference said: (289 U. S. 395, 410-411)

> "The question, then, comes down to the procuring of the money necessary to effect the prompt completion of the sewage treatment works and the complementary facilities. To provide the needed money is the special responsibility of the State of Illinois. For the present halting of its work the Sanitary District is not responsible. It appears to be virtually at the end of its resources. The Master states that, due to its financial condition, the Sanitary District cannot go forward in any adequate manner with either contracts or construction. We find that the Master's conclusion that there is no way by which the decree can be per-

formed under tolerable conditions 'unless the State of Illinois meets its responsibility and provides the money', is abundantly supported by the record.

"That responsibility the State should meet. Despite existing economic difficulties, the State has adequate resources, and we find it impossible to conclude that the State cannot devise appropriate and adequate financial measures to enable it to afford suitable protection to its people to the end that its obligation to its sister States, as adjudged by this Court, shall be properly discharged.

"We do not undertake to prescribe the particular measures to be taken or to specify the works and facilities to be provided. But in view of the delay that has occurred and the importance of prompt action, and in order that there may be no ground for misapprehension as to the import of the decree or the duty of the defendant State, we think that complainant States are entitled to have the decree enlarged by the addition of the following provision:

"That the State of Illinois is hereby required to take all necessary steps, including whatever authorizations or requirements, or provisions for the raising, appropriation and application of moneys, may be needed in order to cause and secure the completion of adequate sewage treatment or sewage disposal plants and sewers, together with controlling works to prevent reversals of the Chicago River if such works are necessary, and all other incidental facilities, for the disposition of the sewage of the area embraced within the Sanitary District of Chicago so as to preclude any ground of objection on the part of the State or of any of its municipalities to the reduction of the diversion of the waters of the Great Lakes-St. Lawrence system or watershed to the extent, and at the times and in the manner, provided in this decree.

"And the State of Illinois is hereby required to file in the office of the Clerk of this Court, on or be-

fore October *2, 1933, a report to this Court of its action in compliance with this provision." (289 U. S. 395, 410-411)

This decision again defined the duty of petitioner and the rights of respondents and recommended an enlargement of the decree of April 21, 1930, as above stated.

(b) *The Requirements of the Decree of April* 21, 1930, *as Modified by the Decree of May* 22, 1933 *were*: (1) *to Reduce, Progressively, the Diversion of Water from Lake Michigan to* 1500 *Cubic Feet Per Second, Plus Domestic Pumpage, and* (2) *to Construct Concurrently Adequate Sewage Treatment Facilities for All of the Sewage of the Sanitary District of Chicago.*

The decree of this Court dated April 21, 1930 (281 U. S. 696) was entered for the purpose of carrying out the conclusions set forth in the opinions of this Court announced on January 14, 1929 (278 U. S. 367) and April 14, 1930 (281 U. S. 179), portions of which have been referred to above. While this decree does not set out the specific measures to be taken by the Sanitary District of Chicago and the State of Illinois to the effect compliance with its provisions with reference to the sewage treatment works construction program, the decree does require that the diversion of water from the Great Lakes-St. Lawrence watershed through the Chicago Drainage Canal be limited as follows:

(1) On and after July 1, 1930, to an annual average diversion not to exceed 6500 cubic feet per second, in addition to domestic pumpage;

(2) On and after December 31, 1935, to an annual average not to exceed 5000 cubic feet per second in addition to domestic pumpage;

(3) On and after December 31, 1938, to an average annual diversion not to exceed 1500 cubic feet per second, in addition to domestic pumpage.

The Court in its opinion of April 14, 1930, approved the recommendation of the Master that the entire system of sewage treatment works of the Sanitary District of Chicago be completed by December 31, 1938, and that the West Side Treatment Works be completed and in operation not later than December 31, 1935. (281 U. S. 179, 199; Report of the Special Master on Re-reference, filed December 17, 1929, pages 81, 142).

Thereafter the decree of April 21, 1930 was enlarged by the Court in 1933 upon the completion of extended hearings before Honorable Edward F. McClennen, Special Master.

On May 22, 1933, the Court entered a decree enlarging the original decree of April 21, 1930, by the addition of the following provision:

> "That the State of Illinois is hereby required to take all necessary steps, including whatever authorizations or requirements, or provisions for the raising, appropriation and application of moneys, may be needed in order to cause and secure the completion of adequate sewage treatment or sewage disposal plants and sewers, together with controlling works to prevent reversals of the Chicago River if such works are necessary, and all other incidental facilities, for the disposition of the sewage of the area embraced within the Sanitary District of Chicago so as to preclude any ground of objection on the part of the State or of any of its municipalities to the reduction of the diversion of the waters of the Great Lakes-St. Lawrence system or watershed to the extent, and at the

times and in the manner, provided in this decree." (289 U. S. 395)

The decree of April 21, 1930, as modified above in 1933, determines the rights of respondents and the duty of petitioner herein.

(c) *The Recommendations of the Special Master with Reference to the Program of Construction of Sewage Treatment Works Required Petitioner in Addition to other Measures to Take Necessary Steps to Secure Completion by December* 31, 1938, *of Adequate Sewage Treatment Works and Facilities for the Disposition of the Sewage of the Sanitary District.*

Honorable (now Mr. Chief Justice) Charles Evans Hughes, in his report on the 1929 Re-reference made the following recommendations with reference to the practical measures to be adopted by Illinois and the Sanitary District with respect to sewage treatment works with their appurtenances (including the allowance of time for the construction of same) as follows: (Report of the Special Master on Re-reference, filed December 17, 1929, pages 141-142)

"(1) That the completion of the North Side, West Side, Calumet, and Southwest Side Sewage Treatment Works, above described, with their appurtenances and the necessary intercepting sewers, and the efficient operation of these plants, will afford practical measures from the standpoint of present sanitary engineering knowledge for the complete treatment of the dry weather flow of sewage and wastes of all the area comprised within the Sanitary District of Chicago, and also, in times of storm, of approximately 150% of the ordinary dry weather flow of sewage and wastes; that in the actual operation of these plants it

may appear that a greater amount of the storm flow can be treated at least in part.

"(2) That what is described as 'complete treatment' of the sewage taken to the sewage treatment works (that is, apart from the excess storm flow which remains untreated) does not amount to 100% purification; that with efficient operation the proposed sewage treatment plants should attain not less than an annual average of 85% purification of the sewage treated, and that it is probable that the degree of purification will be 90% or more.

"(3) That the remainder of the storm flow, in excess of the volume treated in the sewage treatment plants will pass into the Chicago River and its branches, and into the canals of the Sanitary District, and any storm flow so passed into the river, its branches and the canals, at storm times will contain sewage and wastes which have not been treated by the sewage treatment works.

"(4) That the time that should be allowed for the completion of the sewage treatment works above described is as follows:

"(a) That the North Side Sewage Treatment Works, with appurtenances, should be completed on or before July 1, 1930;

"(b) That the Calumet Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1933;

"(c) That Batteries A and B of the Imhoff tanks of the West Side Sewage Treatment Works should be completed on or before July 1, 1930;

"(d) That the West Side Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1935;

"(e) That the Southwest Side Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1938;

"(f) That the necessary intercepting sewers pertaining to the above described sewage treatment works should be completed within the time allowed for the completion of the sewage treatment works, respectively;

"(g) That in the foregoing estimate allowance is made for ordinary contingencies, but not for strikes or other occurrences beyond the control of the Sanitary District or its contractors."

Honorable Edward F. McClennen, Special Master, to whom this matter was again referred by order of this Court entered December 19, 1932, had before him certain subjects for summary inquiry and report, (Report of the Special Master, Edward F. McClennen, March 13, 1933, pages 4-5). Thereafter, hearings were held and a report filed with the Court by the Special Master on March 13, 1933.

The Special Master on the 1933 Re-reference made, among others, the following findings and recommendations: (Report of the Special Master, Edward F. McClennen, March 13, 1933, pages 125-128)

"3B: The financial measures on the part of the State of Illinois which are reasonable and necessary in order to carry out the decree of this Court are in the enlargement of the decree by adding to it a paragraph providing that the State of Illinois be enjoined to appropriate through its General Assembly, before July 1, 1933, the sum of thirty-five million dollars to be expended before the end of the first fiscal quarter after the adjournment of the next regular session or in any event before October 1, 1934, and the same amount per year for each year ending on September thirtieth thereafter for the designing and the securing the authorization from the War Department and for construction of Controlling Works for the purpose of preventing reversals of the Chicago River at times of storm and the introduction of storm flow into Lake

Michigan and for sites for, and for the engineering expenses of designing, and for the construction, enlargement, alteration and completion of the intercepting sewer tunnels, conduits, sewage treatment plants and pumping stations commonly known as the Calumet Treatment Works, North Side Treatment Works, West Side Treatment Works and Southwest Side Treatment Works and all things appertaining thereto within the Sanitary District of Chicago, until all the same shall have been fully completed; and to incur indebtedness therefor and for the purposes aforesaid and no other to issue and to sell bonds of the State of Illinois for the amounts so appropriated and on such terms of payment and maturity and at such rates of interest as the General Assembly shall determine and without the laws authorizing the same being submitted to the people of Illinois and the said laws shall be valid and the bonds so issued if in other respects conforming to the Constitution and laws of the State of Illinois notwithstanding the fact that said laws have not been submitted to the people of Illinois either theretofore or thereafter and any sums expended for said Works by the Sanitary District of Chicago, hereafter, from its own funds in any year ending September thirtieth shall reduce by so much the state of Illinois is hereby required to expend."

It is clear under the recommendations of the Masters in these causes that it was the duty of petitioner and the Sanitary District of Chicago to reduce on December 31, 1938, the annual average diversion to 1500 cubic feet per second, plus domestic pumpage, and to complete on or before December 31, 1938, adequate sewage treatment works for the disposition of the sewage of the Sanitary District.

## IV.

## EXTENT OF COMPLIANCE WITH THE REQUIREMENTS OF THE DECREE OF APRIL 21, 1930 AND THE DECREE OF MAY 22, 1933.

(a) *The State of Illinois and its agent the Sanitary District of Chicago have complied with the decree with respect to reductions in diversion of the waters of the Great Lakes-St. Lawrence Watershed through the Chicago Drainage Canal.*

The Sanitary District of Chicago has complied with the terms and requirements of the decrees of this Court with respect to the reduction in diversion of water from Lake Michigan.

The semi-annual reports of the Sanitary District of Chicago filed with the clerk of this Court beginning on July 1, 1930, and ending with the final semi-annual report dated January 1, 1939, coupled with the records in the office of the United States District Engineer at Chicago, indicate that the reductions in diversions of water from Lake Michigan since the entry of the decree of April 21, 1930, have been made, both as to amount and as to time, in accordance with the requirements of the decree of this Court.

The reduction in diversion of water from Lake Michigan to an annual average of 6500 cubic feet per second, plus domestic pumpage, was made on July 1, 1930; the reduction in diversion to 5000 cubic second feet, plus domestic pumpage was made on December 31, 1935, and the final reduction in diversion of water from Lake Michigan to 1500 cubic feet per second, plus domestic pumpage, was made on December 31, 1938.

The net diversion by the Sanitary District of Chicago, and the domestic pumpage of the Chicago metropolitan area for the year 1939 and for January 1940 are shown in the following table:

| Month of 1939 | Net Diversion by Sanitary District of Chicago from Lake Michigan c.f.s. | Domestic Pumpage, Chicago Metropolitan area c.f.s. |
|---|---|---|
| January | 1413 | 1488 |
| February | 2445 | 1504 |
| March | 1654 | 1515 |
| April | 1006 | 1689 |
| May | 1073 | 1532 |
| June | 2542 | 1669 |
| July | 995 | 1878 |
| August | 1089 | 1801 |
| September | 1093 | 1733 |
| October | 1399 | 1619 |
| November | 1298 | 1518 |
| December | 1978 | 1487 |
| Average, 1939 | 1499 | 1620 |
| Maximum, 1939 | 6748 | 2119 |
| Minimum, 1939 | 412 | 1351 |
| January, 1940 | 1364 | 1581 |

(b) *The State of Illinois and the Sanitary District of Chicago are in default in failing to comply with the decree with respect to the program of construction, completion and operation of adequate sewage treatment plants, sewers and other facilities for the disposition of all of the sewage of the Sanitary District of Chicago.*

The petition of the State of Illinois, filed with this court on January 15, 1940, and the semi-annual reports of the Sanitary District of Chicago filed with the court

pursuant to decree of April 21, 1930, disclose that the State of Illinois and its agency, the Sanitary District of Chicago, have failed, neglected or refused to comply fully and promptly with the decree of this court by failing, neglecting or refusing to complete on or before December 31, 1938 (the date of the final reduction in the diversion of the waters of Lake Michigan to 1500 cubic feet per second plus domestic pumpage), adequate sewage treatment plants, sewers and other facilities for the disposition of all of the sewage of the Sanitary District of Chicago.

The original decree of April 21, 1930 (281 U. S. 696) required the diversion from the Great Lakes-St. Lawrence watershed through the Chicago Sanitary Canal be reduced by specified amounts at definitely fixed dates. This decree was thereafter enlarged so as to require the State of Illinois to take all necessary steps, including the raising of monies that might be needed, in order to secure the completion of adequate sewage treatment plants, sewers, and other facilities for the disposition of all of the sewage of the area embraced in the territory of the Sanitary District of Chicago "so as to preclude any objection on the part of the State or any of its municipalities to a reduction of the diversion of the waters of the Great Lakes-St. Lawrence System or watershed to the extent, at the times, and in the manner provided in this decree." (289 U. S. 395-396).

This Court found that the times fixed by the Master for the completion of the various sewage disposal works proposed by petitioner and its said agency were as liberal as the evidence permitted (281 U. S. 179, 199). With any reasonable diligence, all of said sewage disposal works and ancillary facilities could easily have been fully completed and placed in operation before the time fixed for the ultimate termination of the illegal diversion on December 31, 1938. After inexcusable delays during 1930-1932 in the

construction program proposed by petitioner and its agency, petitioner and its agency in November 1932, filed a response to a rule to show cause issued by this Court on October 10, 1932, in which petitioner and its agency advised this Court that, notwithstanding previous delays, adequate time remained for the completion of the sewage disposal works and ancillary facilities within the time fixed by the decree for the ultimate termination of the illegal diversion. Although petitioner and its agency were never reasonably diligent in prosecuting the construction program involved in providing complete treatment for all of the sewage of The Sanitary District of Chicago, the progress of construction, as measured by the construction expenditures reported from year to year to this Court by The Sanitary District of Chicago, plainly show that all of these works could have been completed and placed in operation well before the time fixed for termination of the illegal diversion, if the construction program were prosecuted with any reasonable diligence and funds were provided for that purpose.

Petitioner does not allege that the time granted by this Court was inadequate for the construction of such works, but merely alleges that its agency, The Sanitary District of Chicago, failed to provide sufficient funds for the performance of this duty of petitioner and its agency under the decree. The deficiency in funds so provided is alleged to have been approximately $9,000,000. The resources and credit of the petitioner were sufficient to have provided many times this sum. It conclusively appears from the Semi-annual Reports filed by The Sanitary District in this Court and from the petition filed by the State of Illinois in response to which the instant rule to show cause was issued, that the State of Illinois has not at any time made available State funds or State credit for the purpose of performing the duty of the State under the

decree. This default of the State in the performance of its duty under the decree stands wholly unexplained and unexcused in the petition.

The plan proposed and adopted by petitioner and its agency for the complete treatment of all of the sewage of The Sanitary District of Chicago consisted of four major sewage disposal plants with necessary intercepting sewers and ancillary facilities, to-wit: the Calumet Plant, the North Side Plant, the Southwest Side Plant and the West Side Plant. The Master found that with reasonable diligence the North Side Plant with appurtenances should be completed on or before July 1, 1930; that the Calumet Plant should be completed and in operation by December 31, 1933; that the West Side Plant with appurtenances should be completed on or before December 31, 1935 and the Southwest Side Plant with appurtenances should be completed on or before December 31, 1938.

The Final Semi-Annual Report of the Sanitary District of Chicago filed January 1, 1939, and the petition of the State of Illinois, filed January 15, 1940, show that as of January 1, 1939, the status of the construction work on the four major sewage treatment plants of the Sanitary District of Chicago was as follows:

1. *Calumet Sewage Treatment Works*

The Calumet sewage treatment plant is designed to treat by the activated sludge process the sewage of a population equivalent to 444,000. This plant provides for complete treatment of all sewage from the Calumet District which embraces an area bordering on the Indiana state line on the east, 87th street on the north, to Harvey and Calumet City on the south, and west to Blue Island

an area comprising approximately 53 square miles. (The Technical Bases for the Recommendations of the Engineering Board of Review of the Sanitary District, Part II (1925), map page 10; Engineering works, Sanitary District of Chicago, August 1928, pages 67-71).

This plant is designed for an average of 130 million gallons daily, with an excess of 50% over the average.

As of January 1, 1939, this plant was 100% completed and in operation except for the connections with the Blue Island intercepting sewer which were only 98% completed on December 1, 1938 (Final Semi-Annual Report, Sanitary District, page 4).

2. *North Side Sewage Treatment Works*

These works are located in the Village of Niles Center, covering an area of 97 acres, and are of the activated sludge type with preliminary settling tanks, digestion of the excess sludge taking place at the West Side Treatment Works. The works consist of a main sewage pumping station and blower house, outdoor electrical substation, grid chambers and coarse screens, preliminary settling tanks, aeration tanks, final settling tanks, operating galleries, main building, service building, miscellaneous conduits and 17 miles of force main for the conveying of the excess sludge to the West Side Treatment Works. This plant is designed for an average flow of 175 million gallons daily and a maximum flow of 50% in excess of the average. (From, Engineering Works, Sanitary District of Chicago, August 1928, pages 71-79).

While the North Side project was completed long before January 1, 1939, (Final Semi-Annual Report, Sanitary District of Chicago, page 4), nevertheless for many years the petitioner or its agent, The Sanitary District

of Chicago, made no arrangements to take care of the sludge produced by this plant but simply discharged the sewage into the Drainage Canal with the result of nullifying in a large degree the benefit which should have been obtained from the completion and operation of this plant. Whether this condition was remedied during 1939 and if so, at what time during 1939, respondents are not advised. Furthermore, throughout 1939, and now, petitioner's agency, The Sanitary District, failed to provide a proper supply of air for the operation of the aeration tanks at the North Side Plant and thereby to a substantial extent nullified, and are still nullifying, the benefits which should be obtained from a reasonable and competent operation of that plant. The result was and is that due to the failure and neglect of the petitioner and its agent to operate this plant in a normal and reasonable manner an additional heavy pollution load is placed on the Canal, Illinois Waterway and upper Illinois River.

3. *Southwest Side Project*

(a) *In General*

Work on the sub-structure of the Racine Avenue Pumping Station was 42% completed on January 1, 1939 and work on the fabrication of pumps for the Racine Avenue Pumping Station was 91% completed as of that date. Contracts were awarded for the super-structure of the Racine Avenue Pumping Station on September 1, 1938, and for the electrical work on this station on September 22, 1938, this work being 6% completed as of January 1, 1939. The contract for mechanical work and erection of machinery at the Racine Avenue Pumping Station was not yet awarded on January 1, 1939. (Final Semi-Annual Report, Chicago Sanitary District, pages

4 and 5.) With the exception of the Racine Avenue Pumping Station which is designed to deliver 25 million gallons daily and which is not yet completed, the above work is now completed.

(b) *Southwest Side Treatment Works*

Construction on the Southwest Side Sewage Treatment Works was begun early in 1935. This plant is designed to treat the sewage of 1,277,000 human population, together with industrial waste equivalent to a human population of 1,185,000, originating largely in the stock yards and packing houses, or a total equivalent population of 2,462,000.

The Southwest Side Treatment Works consist of a combined sewage pumping station and blower house, preliminary settling tanks, two batteries of aeration and final settling tanks, sludge concentration tanks and a sludge disposal building adjacent to the pumping station and blower house. It was placed into partial operation in June 1939 and was completed and placed into full operation about October 1, 1939, except for the Racine Avenue pumping station which is expected to be completed soon. The designed capacity of this plant is an average sewage flow of 400 million gallons daily, with a maximum 50% in excess of this. (Final Semi-Annual Report, Sanitary District of Chicago, pages 12 et seq; Petition of State of Illinois, pages 4 et seq; Civil Engineering, May 1939, article entitled "Southwest Sewage Treatment Works" by William H. Trinkaus, Chief Engineer, Sanitary District of Chicago, pages 285-288).

4. *West Side Treatment Works*

The entire West Side treatment plant consists of three batteries of Imhoff tanks for the preliminary settling and

digestion of the sewage of the west side area, and for digesting the waste sludge from the North Side Treatment Works. Although the Master found that this plant should have been completed with reasonable diligence on or before December 31, 1935, it has not yet been completed. At the present time this plant is providing only preliminary treatment in Imhoff tanks, which is only 33⅓ per cent treatment. Not only has this partially treated sewage been discharged into the waters described in the petition ever since December 31, 1935, but during a large part of that time no provision whatever was made for taking care of the sludge from the Imhoff tanks and such sludge was discharged into the waters described in the petition. The default of the petitioner and its agent with reference to the completion of the West Side Plant and ancillary facilities has, therefore, contributed very greatly to such pollution, if any, as has existed in the waters described in the petition since December 31, 1935, and continues to contribute to such pollution, if any, as exists in those waters.

The petition of the State of Illinois, filed January 15, 1940, alleges that the present facilities at the West Side Treatment Works, as outlined hereinbefore, should be supplemented by the addition of complete treatment facilities so as to raise the degree of treatment of the sewage of the said west side area from 33⅓% to 85%. (See Petition of the State of Illinois, pages 5 et seq; see also Final Semi-Annual Report, Sanitary District of Chicago, filed January 1, 1939, page 13).

5. *Miscellaneous* (Morton Grove, Glenview and Northbrook)

These treatment plants consist of Imhoff tank (trickling filter works) and treat the sewage of a population

equivalent of 6,000 people. The percentage of treatment obtained as reported is 85%. These plants were all in operation on January 1, 1939.

6. *Summary*

The actual sewage treatment of the Sanitary District of Chicago as of December 31, 1938, as shown by the Final Semi-Annual Report of the Sanitary District to this court (page 11) is as follows:

| Treatment Works | Population Equivalent | Percentage Treatment | Treatment 100 per cent basis |
|---|---|---|---|
| Calumet | 444,000 | 85 | 377,000 |
| North Side | 1,291,000 | 85 | 1,097,000 |
| West Side (Sedimentation) | 1,722,000 | 33⅓ | 574,000 |
| Miscellaneous (Morton Grove, Glenview, Northbrook) | 6,000 | 85 | 5,000 |
| Corn Products (Reduction) | 425,000 | 91.5 | 389,000 |
| Total treated | 3,888,000 | 62.8 | 2,442,000 |
| Not treated | 2,606,000 | 0 | 0 |
| Total population | 6,494,000 | 37.7 | 2,442,000 |

The following table shows the amount of money expended by the defendants for construction work on sewage treatment plants and facilities for the period from 1930-1939 inclusive:

| | | | |
|---|---|---|---|
| 1930 | $5,339,377 | 1935 | $11,214,353 |
| 1931 | 4,686,717 | 1936 | 16,344,921 |
| 1932 | 705,469 | 1937 | 14,940,266 |
| 1933 | 424,801 | 1938 | 9,570,986 |
| 1934 | 6,755,594 | 1939 | 4,177,748 |

(Semi-annual reports of Sanitary District of Chicago, filed with the U. S. Supreme Court pursuant to decree of April 21, 1930; Petition of State of Illinois, filed January 15, 1940)

The Sanitary District of Chicago during the period 1930-1939 inclusive demonstrated its ability to construct sewage treatment facilities costing more than 16 million dollars in one year. The three years asked in which to finance and construct 9 million dollars worth of additions to the West Side Plant is manifestly much too long a time for such work when the entire construction program, as recommended by the Master and as approved by the Court, was eight years. This eight year period so fixed was extremely liberal, as the Court pointed out (281 U. S. 179, 197).

It should also be noted that the frequent use of the term "population equivalent" by petitioner is something adopted by the petitioner or its agent, the Sanitary District of Chicago, in view of the exigencies of the suit. All other municipalities in this country have industrial wastes which they include and treat in their sewage disposal works as a matter of course. Such other municipalities have never felt it necessary to build up and magnify their problem or to exaggerate their accomplishments by the adoption and use of new phrases such as "population equivalent."

C. *The Default of the Petitioner in the Construction and Completion of Adequate Sewage Treatment Facilities Remains Wholly Unexplained and Unexcused and Has Resulted in the Discharge of Large Quantities of Untreated or Partially Treated Sewage into the Waters Described in the Petition, Causing such Pollution, if any, as Appeared Therein During* 1939.

It is manifest from the foregoing that the petitioner and its agent, the Sanitary District of Chicago, were and are in default in the performance of the decree of April

21, 1930. This default of petitioner has resulted in the discharge of large quantities of untreated or partially treated sewage during the year 1939 into the waters mentioned in the petition and this has resulted in such pollution, if any, as appeared in those waters during 1939. The placing of enormous quantities of raw sewage equivalent into those waters has undoubtedly resulted in deposits of sludge which will to some extent effect conditions therein in 1940 although the effects of such past defaults will not extend beyond that season.

## V.

## THE EFFECT OF THE CHICAGO DIVERSION ON THE LEVELS OF THE GREAT LAKES IS TO LOWER SUBSTANTIALLY THE NATURAL LEVELS OF SUCH LAKES, CAUSING GREAT LOSS TO RESPONDENTS AND THEIR PEOPLES.

### (a) *The Lowering of the Natural Levels of the Great Lakes Due to the Illegal Diversion of the Waters Thereof by Petitioner has Caused Great Continuing Damages to Respondents and Their Citizens.*

Under the decree in these causes it is now *res adjudicata* that the illegal diversion of water from Lake Michigan by petitioner has substantially lowered the natural levels of the Great Lakes and that such lowering of the natural levels of the Great Lakes has caused great continuing damage to respondents and their citizens and that the restoration of normal lake levels and the termination of such continuing damages to respondents and their citizens will require a period of five years after the termination of the illegal diversion of petitioner from Lake Michigan. (Report of Special Master, filed Nov. 23, 1927, pp. 114-115;

*Wisconsin et al. v. Illinois et al.*, 278 U. S. 367, 409) The modification of the decree requested by the petitioner would, if granted, postpone the restoration of normal lake levels and the termination of these continuing damages to respondents and their citizens for a period of four years. During most of the navigation season of 1939, the draft of vessels carrying the great ore, coal and grain traffic between the head of the Lakes and lower lake reports was restricted to 19 feet, greatly reducing the loads which could be carried by vessels carrying 90 per cent of this traffic in comparison with the loads which could have been carried but for the lower lake levels caused by the petitioner's diversion.

(b) *The Trend of Lake Levels is Downward at the Present Time; On January* 31, 1940 *the Levels of Lakes Michigan and Huron were only Slightly Higher than the Annual Mean Average for the Preceding Eight Years while the Levels of Lakes Erie and Ontario were Below the Annual Mean Average for the Preceding Eight Years.*

Whether or not the Great Lakes are averaging a foot higher than they have averaged over the past eight years is irrelevant and immaterial. However, the latest chart of the United States Lake Survey shows that the levels of Lakes Michigan and Huron at the end of January, 1940, were only 46/100ths of a foot higher than the annual mean average for the preceding eight years; but the level of Lake Erie was 24/100ths of a foot *below* the annual mean average for the preceding eight years and that the level of Lake Ontario was 45/100ths of a foot *below* the annual mean average for the preceding eight years and that the trend of lake levels is downward at the present time. Moreover petitioner bases its comparison upon an

eight year period, during which the normal levels of the Great Lakes were substantially lower than they otherwise would have been, by reason of the illegal diversion of petitioner.

The levels of the Great Lakes for the period 1930 to 1939 are shown by the following table:

| | Lake Michigan | | Lake Huron | | Lake Erie | | Lake Ontario | |
|---|---|---|---|---|---|---|---|---|
| Year | High | Low | High | Low | High | Low | High | Low |
| 1930 | 581.15 | 579.15 | 581.20 | 579.20 | 573.95 | 571.65 | 248.10 | 245.10 |
| 1931 | 579.15 | 578.20 | 579.15 | 578.20 | 571.70 | 570.70 | 245.45 | 243.95 |
| 1932 | 578.60 | 577.55 | 578.60 | 577.55 | 571.85 | 570.40 | 246.15 | 243.95 |
| 1933 | 578.65 | 577.45 | 578.65 | 577.45 | 572.10 | 570.00 | 245.45 | 243.35 |
| 1934 | 578.05 | 577.40 | 577.95 | 577.40 | 570.40 | 569.45 | 244.50 | 242.70 |
| 1935 | 578.55 | 577.55 | 578.60 | 577.60 | 570.90 | 569.50 | 244.30 | 242.80 |
| 1936 | 578.70 | 577.75 | 578.70 | 577.80 | 571.20 | 569.43 | 245.25 | 242.80 |
| 1937 | 578.65 | 577.70 | 578.65 | 577.70 | 572.60 | 570.20 | 246.05 | 242.50 |
| 1938 | 579.65 | 577.65 | 579.65 | 577.60 | 572.30 | 570.55 | 245.95 | 244.40 |
| 1939 | 580.00 | 578.80 | 580.00 | 578.80 | 572.40 | 570.95 | 246.15 | 244.15 |

| Average | High | Low | Mean |
|---|---|---|---|
| 1860-1899 for Lake Michigan | 582.06 | 580.74 | 581.40 |
| 1900-1939 | 580.32 | 579.06 | 579.70 |

The Lakes Survey chart shows that the levels of the Great Lakes have been dropping rapidly since August 1939 when the stage of Lakes Michigan and Huron was almost 580 feet above mean tidewater at New York, while on January 31, 1940 such lake stage was only 578.75 feet above mean tidewater at New York, a drop of more than 15 inches in six months, and that during January, 1940, the total drop in levels of such lakes was 3 inches. The mean level of Lake Erie began to drop in June 1939 from 572.40 to 570.65 feet on January 31, 1940, a drop of 21 inches. Lake Ontario reached a high of 246.15 feet in May, 1939 when the level began to drop until the mean lake stage of record on January 31, 1940 was 243.95, a drop of 26 inches in 8 months.

On the basis of the recent drop in the water levels of the Great Lakes and considering the drought conditions which obtained in this region during a great part of 1939, it would seem that the water levels will continue to drop rather than rise during the next three years and if so the complainant states would again be faced with some of the lowest Lake levels in history with the resultant additional damage and loss to the navigational and riparian interests of the respondent states and their peoples.

The Special Master has pointed out that the damages and losses to respondents and their peoples are greatest when the mean water levels on the Great Lakes are lowest. (Report of Special Master, Nov. 23, 1927, p. 116).

## VI.

## THE PRIMARY CAUSE OF THE ALLEGED UNSATISFACTORY CONDITIONS WHICH PETITIONER CLAIMS OBTAINED IN THE SANITARY CANAL, THE DES PLAINES AND ILLINOIS RIVERS IN THE SPRING AND SUMMER OF 1939 WAS AND IS THE FAILURE AND NEGLECT OF THE SANITARY DISTRICT OF CHICAGO AND THE STATE OF ILLINOIS TO COMPLY FULLY AND PROMPTLY WITH THE DECREES OF THIS COURT DATED APRIL 21, 1930 and MAY 22, 1933, WITH RESPECT TO THE CONSTRUCTION, COMPLETION AND OPERATION OF ADEQUATE SEWAGE TREATMENT PLANTS, SEWERS AND OTHER FACILITIES FOR THE DISPOSITION OF THE SEWAGE OF THE SANITARY DISTRICT OF CHICAGO.

(a) *The alleged unsatisfactory conditions which obtained in the Sanitary District Canal, the Des Plaines and Illinois Rivers in* 1939 *were caused solely by the failure of the State of Illinois and the Sanitary District of Chicago to comply fully and promptly with the decree of this court.*

Petitioner complains that conditions in the Sanitary District Canal, the Illinois Waterway and Upper Illinois River were not satisfactory during the spring, summer and fall of 1939. We have heretofore demonstrated that the default of petitioner and its agent, the Sanitary District of Chicago, in complying with the decree of this court, resulted in the placing of enormous quantities of raw sewage equivalent into the waters described in the petition during 1939. The effect of discharging such

raw sewage equivalent into those waters was to create conditions which petitioner describes as unsatisfactory during 1939.

Under the decisions of this court and under the decree of April 21, 1930, the restoration of the adjudged rights of respondents and their peoples was postponed and made gradual solely as a matter of favor to petitioner and its agent, the Sanitary District of Chicago, upon the representation of said petitioner and its agent that notwithstanding their adjudged wrong they should be given an opportunity and a reasonable time within which to construct sewage treatment facilities for the complete treatment of all of the sewage of the district. The court granted such additional time solely in the interests of the health of the people for the Chicago metropolitan area. In its return to the Supreme Court filed in November, 1932, petitioner and its agent reported that they would be able, with due diligence, to construct and complete within the time specified by the court, all of the necessary sewage disposal works and ancillary facilities.

As of January 1, 1939, petitioner and its agent provided for complete treatment of only 37.7 per cent of all of the sewage of the Sanitary District of Chicago. The result was that 62.3 per cent of all of the sewage of the District, amounting to a total "population equivalent" of 4,462,000 was dumped without treatment into the waters described in the petition. Thus, such pollution, if any, as appeared in those waters was caused solely by reason of the default of petitioner and its agent and their failure and neglect to operate the existing plants in a normal and efficient manner.

(b) *The conditions which obtained in the Sanitary District Canal, the Des Plaines and Illinois Rivers in 1939 were not as bad as pictured in the Illinois Petition; in fact the conditions in those water-courses in 1939 when the direct diversion from Lake Michigan was 1500 c. s. f. were no worse than the conditions which existed in previous years when the direct diversion from Lake Michigan was nearly five times as great.*

In the petition of the State of Illinois, much attention is devoted to showing the dissolved oxygen content in these water-courses in the summer of 1939 when the direct annual average diversion was 1500 cubic feet per second. The figures reported by the State of Illinois show that the dissolved oxygen content was at times zero per million, and at other times not much higher. These figures do not disclose a condition any worse than when the direct diversion of water from the Great Lakes-St. Lawrence watershed was nearly five times as great as it was in 1939.

In a survey made by the U. S. Public Health Service from July 1921 to August 1922, it was discovered that during the month of July 1922 the dissolved oxygen at Lockport was zero for thirty days and that for one day in July 1922 the dissolved oxygen content of the Des Plaines and Illinois Rivers was 0.3. At Morris, Illinois, during July 1922 the dissolved oxygen content at Station E was zero for 24 days, while during seven days of that month the dissolved oxygen content at Station E was 0.4, 0.3, 0.3, 0.5, 0.4, 0.3, and 0.2. (Report of the Engineering Board of Review of the Sanitary District, 1925, part III Appendix I, page 50.)

This would indicate that the dissolved oxygen content in the Des Plaines and Illinois Rivers at Lockport, and below that at Morris, during the 1939 season was no worse than it was in those watercourses during 1922 when the direct diversion at Lockport and Summit was about 7,000 c. s. f. (Report of Engineering Board of Review, Sanitary District of Chicago, 1925, Part III, Appendix I, page 48).

(c) *The State of Illinois, in addition to neglecting to construct and complete by December 31, 1938, adequate sewage treatment facilities for treatment and disposition of all the sewage of the Sanitary District of Chicago, has added to the seriousness of the situation complained of by the construction after the decree of April 21, 1930 of the dam at Brandon's Bridge, near Joliet, thereby replacing the former turbulent flow of the river and its great purifying capacity with a slack water, stagnant pool.*

The State of Illinois has not only created the situation complained of by failing and neglecting to provide adequate sewage treatment facilities by December 31, 1938 so as to provide complete treatment of all the sewage of the Sanitary District of Chicago but it has added to the seriousness of the situation complained of, particularly by the citizens of Joliet, Illinois, by the construction of the dam at Brandon's Bridge near Joliet, thereby replacing the former turbulent flow of the river and its great purifying capacity, with a slack water, stagnant pool. Prior to the construction and completion of the dam at Brandon's Bridge, near Joliet, the oxygen demand due to the Chicago sewage load was satisfied to some extent by re-aeration

in the Sanitary Drainage Canal and the Des Plaines and Illinois Rivers. At Lockport, during July and August, 1922, tests showed a 28% reduction in the oxygen demand caused by the Chicago load, and that in the turbulent section through Joliet this reduction in oxygen demand was increased to over 50% of the total. This was the equivalent of 100% treatment for 22% of the total population equivalent of 6,494,000; that is, the equivalent of 100% treatment of the sewage of about 1,400,000 people. The dam at Brandon's Bridge together with the locks and dams at Marseilles, Dresden Island and Starved Rock were part of the $20,000,000.00 program of the State of Illinois for the improvement of this section chiefly for the development of hydro-electric power. With the construction of the dam at Brandon's Bridge and the creation of the so-called Brandon Road pool extending back toward Lockport more than 5½ miles, this section with a drop of about 30 feet was changed from a turbulent, fast flowing stream with a great purifying capacity, to a slack water, stagnant pool which has become, in fact, a settling tank for the large volume of untreated sewage of the Chicago area. The sewage from the Lemont and Lockport areas is also dumped into this waterway untreated.

(d) *The Conditions which will obtain in the Sanitary Canal, the Illinois Waterway and the Upper Illinois River During* 1940 *Will Result in No Nuisance or Unhealthy Environment.*

Petitioner alleges that it will be necessary during 1940 in order to avoid unsatisfactory conditions in the Sanitary Canal, the Illinois Waterway and Upper Illinois River to obtain an increase in the annual average diversion to 5,000 cubic second feet plus domestic pumpage.

In the petition filed with this court on January 15, 1940, petitioner reports that as of January, 1940 the treatment of the sewage of the Sanitary District will be increased to 70.4 per cent and that as of May, 1940 the total percentage of sewage treatment will be raised to 75.1 per cent.

It is manifest that in view of the increased treatment of sewage, the conditions which will obtain during 1940 in the Sanitary Canal, the Illinois Waterway and Upper Illinois River will be immeasurably improved over the conditions which obtained therein in 1939. While the conditions during 1939 may not have been ideal in the waters described in the petition, petitioner has no equity to insist that such conditions be improved at the expense of respondents and their peoples, when the very condition of which petitioner complains has been caused by failure, neglect or refusal of petitioner and its agent to comply with the decree of this court.

It should also be pointed out that in 1940 the amount of raw sewage equivalent that will be placed in the waters mentioned in the petition will be materially reduced. The effluent from the treatment plants will be rich in oxygen, thus reducing the bio-chemical oxygen demand which is present in the raw sewage.

Comparing the residual organic matter in the effluent of an activated sludge sewage treatment plant with an equal percentage of the raw sewage as a potential source of nuisance is grossly misleading. From the standpoint of bulk, the organic load would be the same. However, from the standpoint of environment of the organic load in the two cases, there is a radical difference. In the case of the organic matter in the effluent, the effluent is rich in oxygen both in the form of dissolved oxygen and nitrates, this oxygen supply being more than adequate to meet the

oxygen demand, resulting in stability. In the case of the raw sewage, the contained oxygen supply is usually decidedly deficient, the net result being that the oxygen demand in the raw sewage will not be supplied by its own oxygen and putrefaction would result.

We submit that with the efficient operation of existing sewage treatment plants of the Sanitary District of Chicago, the 1500 cubic feet per second diversion, plus domestic pumpage of approximately 1700 cubic feet per second, will provide enough oxygen to balance the remaining biochemical oxygen demands of the effluents from said sewage treatment works.

## VII.

## NO UNHEALTHFUL CONDITIONS OBTAINED IN THE SPRING, SUMMER OR FALL OF 1939 IN THE SANITARY DRAINAGE CANAL, DES PLAINES OR ILLINOIS RIVERS OR THE AREAS ADJACENT THERETO, NOR WILL ANY UNHEALTHFUL CONDITIONS OBTAIN DURING THE SUMMER OF 1940 IN SUCH WATERWAYS OR IN AREAS ADJACENT THERETO.

(a) *No unhealthful conditions obtained during the spring, summer or fall of* 1939 *in the area adjacent to the Sanitary District Drainage Canal, the Des Plaines or Illinois Rivers.*

Petitioner alleges that unhealthful conditions obtained in such waterways or in areas adjacent thereto. (Petition, pp. 8-9)

Plaintiff's Petition is manifestly in error in this assertion because:

(1) The unsatisfactory conditions, if any, which obtained for a portion of the year 1939 in the Sanitary District Canal, the Des Plaines and Illinois Rivers were not caused by the "effluent" of sewage from the Sanitary District, but was caused, if at all, by the dumping of millions of gallons of raw sewage equivalent of the Sanitary District into the aforesaid waterways. The effluent from the sewage treatment plants efficiently operated is a stable, clear, sparkling liquid which will not cause any unsatisfactory conditions in any of the waterways in which it is placed.

(2) The reports submitted to the U. S. Public Health Service by the State Health Officer for the State of Illinois disclose that no unusual incidence of waterborne or other diseases occurred along the Illinois Waterway or in areas adjacent thereto.

(3) The cities mentioned in the petition from which complaints are alleged to have come, namely Lemont, Lockport, Joliet, Morris, Marseilles, Ottawa, and LaSalle, Illinois, do not take their drinking or domestic water from the Illinois Waterway. All of such cities or towns, except Argo which obtains its drinking water from Chicago, obtain their drinking supply from wells located in the vicinity thereof.

(4) Whether, and if so to what extent, petitioner has received the complaints from certain municipalities set forth in the petition, respondents are not advised. In that connection respondents suggest that complaints about the nuisance conditions created in these waters by The Sanitary District of Chicago were continually and repeatedly made by municipalities

along such waters for twenty years prior to the entry of the instant decree and that petitioner was never moved to take any action by reason of said complaints. It is manifest that petitioner is without equity now to urge such complaints as the basis for continuing its adjudged wrong and for postponing the restoration of the adjudged rights of respondents.

(5) No claim is made that any epidemics of typhoid, cholera or other waterborne diseases were caused by the alleged unsatisfactory conditions during 1939 in the Sanitary District Canal and Illinois Waterway. No such claim could be made. Cholera in human beings has practically been stamped out in this country. Typhoid fever cases in communities along the Illinois Waterway in 1939 were far fewer than in the balance of the state of Illinois.

There were 140 typhoid fever cases in Illinois in a 4,670,660 population, or slightly more than 3 cases of typhoid per 100,000 population from the territory tributary to the Illinois Waterway during 1939.

There were a total of 928 cases of typhoid reported to the U. S. Public Health Service by all counties in Illinois in 1939, of which 460 came from Kankakee County. This large number was due to a contaminated well water supply at the State Hospital at Manteno, and since this was an unusual case and one which has been traced to its source, we will eliminate Kankakee County entirely from further consideration.

The 1930 population for the state of Illinois was 7,630,654. Deducting the population of the twenty counties adjoining the Illinois Waterway and the population of Kankakee County which together totalled 4,720,755, the remaining counties of the state have a population of

2,909,899, and they produced a total of 328 typhoid fever cases, or an average of 11.4 cases per 100,000 population during 1939.

(b) *No unhealthful conditions will obtain, during the year* 1940, *in the area adjacent to the Sanitary Drainage Canal, the Des Plaines and Illinois Rivers.*

We have demonstrated that no unhealthful conditions obtained during the spring, summer and fall of 1939 in the Sanitary Drainage Canal, the Des Plaines and Illinois Rivers, or the area adjacent thereto. It is manifest that during the year 1940 conditions in these waterways will be materially improved from a pollution standpoint, with the result that the sewage effluent in these streams will represent no menace or hazard to the health of persons living along or adjacent thereto.

As a matter of sanitation, every city in the country is faced with the problem of disposing of its sewage, so as to safeguard the health of its citizens. The situation in Chicago, in this respect is no different than it is elsewhere, yet other cities have been able to solve such problem without asking or expecting neighboring communities to forego or relinquish any of their rights. The State of Illinois and the Sanitary District of Chicago can solve their problem by the construction of adequate facilities and the proper and efficient operation of the same, making it unnecessary to ask the respondent states to surrender their property rights in the levels of the Great Lakes, on the plea that the health of the inhabitants along the Chicago Sanitary Canal, the Des Plaines and Illinois Rivers is imperiled.

## VIII.

PETITIONER'S REQUEST FOR A TEMPORARY INCREASED DIVERSION TO DECEMBER 31, 1942 IS BASED ON THE ALLEGED NEED FOR ADDITIONAL TIME TO COMPLETE THE WEST SIDE SEWAGE TREATMENT PLANT IN ORDER TO PROVIDE ULTIMATE TREATMENT OF ALL OF THE SEWAGE OF THE SANITARY DISTRICT OF CHICAGO ON AN 85 PER CENT TREATMENT BASIS. THIS ULTIMATE TREATMENT CAN BE ATTAINED AT ONCE WITH EXISTING INSTALLATIONS.

Petitioner's tables at pages 10 and 11 of the petition showing conditions and treatment of sewage from June 1938 and the ultimate treatment expected by various dates by the Sanitary District of Chicago disclose that the additional time sought by the petitioner is deemed necessary in order to provide an ultimate treatment of a total population equivalent of 6,494,000 on an 85 percentage treatment basis.

The plea of the petitioner for additional time so as to secure ultimate treatment of all the sewage of the District on an 85 per cent treatment basis is without merit, inasmuch as the Sanitary District of Chicago, as agent of the State of Illinois, is now able to obtain such ultimate treatment immediately with the efficient operation of existing installations and by any one of the following methods or combinations thereof;

(a) By increasing the amount of sewage from the West Side area which is treated in the Southwest Side Treatment Works so as to provide complete treatment of a larger amount at the Southwest Side sewage treatment plant. This is an entirely practicable

procedure and has been recognized as such by officials of the Sanitary District of Chicago. William H. Trinkhaus, Chief Engineer of the Sanitary District of Chicago, in an article appearing in "Civil Engineering" for May, 1939, said:

> "The estimated tributory human population to be handled at the Southwest Works as of 1940 is 1,277,000, together with industrial wastes equivalent to a human population of approximately 1,185,000, largely originating in the stockyards and packing-house district. The initial installation is designed for an average sewage flow of 400 M.G.D. with a maximum 50 per cent in excess of this. Long-time experiments at the North Side Works indicate, however, that the new plant will probably run satisfactorily at a continuous rate considerably in excess of the design average rate. A cross connection between the West Side and Southwest intercepting sewer systems at the plant side makes possible the diversion of West Side sewage in any desired amount to the Southwest Works. Thus the Southwest Works can operate continuously at its maximum load and give complete treatment to the largest possible volume of sewage, and the remaining West Side flow can be handled at the existing West Side Works, where at present only partial treatment is provided."

(b) By increasing the efficiency of all of the plants now operated by the Chicago Sanitary District, namely, the North Side Plant, the Calumet Plant, the West-Southwest Side Plants, to approximately 93 to 95% instead of 85% efficiency now provided for. The efficiency of these plants has been reduced by reason of the failure of the Sanitary District to operate already installed equipment so as to provide sufficient air for the aeration tanks. At the present time in the

aeration of the sewage at least at the North Side Plant air is used on the basis of less than .4 cubic feet per gallon. Equipment is installed and available to provide about 1 cubic foot per gallon. If the aeration of the sewage were increased the efficiency of the operations would be increased considerably and could thus provide for an efficiency from 93% to 95%.

(c) By the addition of supplementary chemical treatment to all or part of the West Side Sewage flow, which would substantially double the efficiency of the Imhoff tanks in the removal of the oxygen demand in the sewage at the West Side Treatment Works.

The above suggested changes in the present program of sewage disposal would increase the efficiency of the sewage treatment of the entire Sanitary District so as to immediately provide for the degree of treatment of the sewage which petitioner states could only be obtained at the earliest by December 31, 1942.

However, in addition to the above changes there is another step which could be and should be adopted so as to further increase the efficiency of the sewage disposal plants and augment their capacity and that is to adopt a complete metering program for the entire domestic consumption of the City of Chicago. Such a metering program for this area would reduce the per capita consumption of water from about 300 to 160 gallons and the capacity of the Chicago Sanitary District treatment works would be increased to such an extent that no addition to the present treatment works would be required for a great many years.

The vital need for complete metering of the entire Chicago area is shown by the following:

(a) The temporary permit of March 3, 1925 which was granted by Secretary of War, John W. Weeks, to the

Sanitary District of Chicago, authorizing an annual average diversion of 8500 cubic feet per second, contained the following condition:

> "8. That if, within six months after the issuance of this permit, the city of Chicago does not adopt a program for metering at least ninety per cent of its water service and provide for the execution of said program at the average of ten per cent per annum, thereafter this permit may be revoked without notice." (Report of Special Master, November 23, 1927, p. 79)

This permit expired by its terms on December 31, 1929, "if not previously revoked or specifically extended."

(b) The enormous water waste in Chicago is again confirmed in the "Report of the Board of Engineers, Appointed by The Hon. Harold L. Ickes, Administrator, Federal Emergency Administration of Public Works, to Review the Plans and Specifications Prepared by the Sanitary District of Chicago for certain Sewage Treatment Work at the West-Southwest Site, dated April 30, 1934" where at page 41, it is said:

> "*Water Waste in Chicago.*
>
> "While the Sanitary District of Chicago has no control over the water supply of the communities within its borders, the amount of water pumped and either used or wasted has a controlling influence on the size of sewers required and the hydraulic capacity of the sewage disposal plants and their appurtenances because the equivalent of this amount reaches the sewers and the disposal plants. The population of the Sanitary District at this time (1934) is estimated at over 4,000,000. Of this population about 3,900,000 are furnished with water by the Chicago Water Works.

"The extravagant waste of water from the Chicago water system, which has long been known to exist, and which seems to be constantly increasing, has added and will continue to add millions of dollars to the cost of the sewers and of the sewage disposal plants of the Sanitary District of Chicago unless such waste is materially reduced. The water annually pumped at the present time exceeds 1,000 M.G.D. and is almost double the amount which is reasonably necessary for domestic and commercial use, as is demonstrated by the results of the use in other cities where continuous inspection, supervision and metering have curtailed waste with relative great economies in construction cost and operative expenditures."

(c) The Public Works Administration contract with the City of Chicago for the construction of the 79th Street Filteration Plant contained a clause requiring the immediate metering of all of the area which would receive filtered water. This area covered approximately the entire south side of Chicago and included most of the area serviced by the Southwest Side Treatment Plant. The original contract between the City of Chicago and the Public Works Administration provided that the metering was to start immediately. Later this provision was waived with the understanding that complete metering of the area referred to would be completed simultaneously with the completion and placing into operation of the 79th Street Water Filteration Plant.

(d) The metering of the West Side and Southwest Side area so as to provide for metered water within the entire area serviced by the West Side and Southwest Side Sewage Treatment Plants would make the present construction program of the Sanitary District of Chicago adequate for complete treatment for both of such areas.

## IX.

## THE COMMUNITIES FROM WHICH THE CHIEF COMPLAINTS HAVE BEEN RECEIVED BY THE STATE OF ILLINOIS AS TO ALLEGED UNSATISFACTORY CONDITIONS IN THE ILLINOIS WATERWAY AND UPPER ILLINOS RIVER AND ON WHICH COMPLAINTS THE PETITION OF ILLINOIS, FILED JANUARY 15, 1940, IS BASED, DO NOT PROVIDE TREATMENT FOR THE SEWAGE OF THEIR POPULATIONS; LEMONT, LOCKPORT AND JOLIET DUMP THE RAW SEWAGE EQUIVALENT INTO SUCH WATERCOURSES.

In considering the petition of the State of Illinois, and the alleged unsatisfactory conditions in certain waterways caused by the failure of the Sanitary District of Chicago and the State of Illinois to complete the sewage treatment program at the times and in conformity with the requirements and recommendations of the Special Master and of the Court, it should be noted that the cities bordering on the Sanitary Drainage Canal, the Des Plaines and Illinois Rivers, from which the main complaints have been received and on which the Illinois petition is based, are not providing treatment for the disposal of the sewage and wastes of their populations. The raw sewage equivalent from Lemont, Lockport and Joliet is placed in these waterways to contaminate further the said waters and to contribute to the very conditions of which complaint is made.

It should also be noted that the city of Kankakee, bordering on the Kankakee River, which river together with the Des Plaines River forms the Illinois River, as respondents are advised, provides only partial treatment

for the sewage and wastes of that area. These wastes partially treated are placed in the Kankakee River and find their way to the Illinois River. This places an additional substantial burden in the form of unstable putrescent material and wastes on the Illinois Waterway and upper Illinois River. It would seem that the protests and complaints forming the main basis of the petition herein come with poor grace from those localities heretofore mentioned which have to date not provided for the proper sanitary disposal of the sewage of their population and industrial wastes.

## X.

## WITH THE PRESENT INSTALLATIONS AND THEIR EFFICIENT OPERATION AND PROPER MAINTENANCE, THE SANITARY DISTRICT OF CHICAGO SHOULD BE ABLE TO OBTAIN AN ANNUAL AVERAGE EFFICIENCY OF 95% ON A 100% BASIS INSTEAD OF THE 85% EFFICIENCY NOW ATTAINED.

It should be noted that in the semi-annual reports filed with this Court the Sanitary District has consistently reported that it was able to obtain at the best an average efficiency of only 85% on a 100% treatment basis in its existing sewage treatment plants. However, there have been many times when the District attained consistently an efficiency of more than 90% at some of its plants. In a publication entitled "Modern Sewage Disposal" (1938) at page 80, of which Langdon Pearse, Chief Engineer of the Sanitary District of Chicago, is editor, it was reported in an article written by J. F. Mohlman, Chief Chemist of the Sanitary District of Chicago, that the North Side Plant of the Sanitary District obtained an average efficiency of 91.5% during the year 1937.

See also, Article entitled "Problems and Trends in the Activated Sludge Practice," November 1939, appearing in the American Society of Civil Engineers, by Richard G. Regester, at page 1516, wherein the efficiency of the North Side Plant was also reported at 91.5%.

It should also be noted that the city of Milwaukee was able to obtain a five-year average in its Milwaukee Plant as follows:

| Removals | Five-Year Average (1928 - 1932) |
|---|---|
| Suspended Solids | 93.5 |
| 20 deg. Bacteria | 97.5 |
| B. O. D. | 95.4 |

Many other activated sludge sewage disposal plants throughout the country are able to operate with an efficiency of more than 90 per cent and there appears to be no reason why the Sanitary District of Chicago with proper operation, cannot obtain an efficiency at its present Calumet, North Side and Southwest Side Sewage Treatment Plants of from 90 to 95 per cent.

## XI.

## THE ALLEGED UNSATISFACTORY FINANCIAL CONDITION OF THE SANITARY DISTRICT OF CHICAGO DOES NOT EXCUSE THE FAILURE OF THE STATE OF ILLINOIS TO MAKE ADEQUATE PROVISION FOR FINANCING COMPLIANCE WITH THIS COURT'S DECREES.

The primary obligation and duty to perform the decree herein rests upon the State of Illinois, of which the Sanitary District of Chicago is a mere political agency.

(289 U. S. 395, 289 U. S. 710). The credit and financial resources of the State of Illinois are more than ample to finance the performance of the decree. In the petition filed with this Court on January 15, 1940, the State of Illinois confesses her default with respect to providing the monies needed to finance a prompt and full compliance with this Court's decrees. The representations made to this Court in the petition disclose that the State of Illinois has made no real effort to place the financial resources of the state at the disposal of the Sanitary District of Chicago for the construction and completion of adequate sewage treatment plants, sewers and facilities for the disposition of all the sewage of the Sanitary District of Chicago. The default of the State of Illinois in this regard affords no reason for further delay in the performance of the decree.

While we believe the present financial condition of the Sanitary District of Chicago would warrant a finding that it could and should have obtained sufficient money to complete their construction program promptly, this is really immaterial. This Court held that it was the special responsibility of the State of Illinois to provide the money needed to effect the prompt completion of the sewage treatment works and complementary facilities. The Court said:

> "The question, then, comes down to the procuring of the money necessary to effect the prompt completion of the sewage treatment works and the complementary facilities. To provide the needed money is the special responsibility of the State of Illinois. For the present halting of its work the Sanitary District is not responsible. It appears to be virtually at the end of its resources. The Master states that, due to its financial situation, the Sanitary District cannot go

forward in any adequate manner with either contracts or construction. We find that the Master's conclusion, that there is no way by which the decree can be performed under tolerable conditions 'unless the State of Illinois meets its responsibility and provides the money,' is abundantly supported by the record.

"'That responsibility the State should meet. Despite existing economic difficulties, the State has adequate resources, and we find it impossible to conclude that the State cannot devise appropriate and adequate financial measures to enable it to afford suitable protection to its people to the end that its obligation to its sister States, as adjudged by this Court, shall be properly discharged.'"

*Wisconsin et al v. Illinois et al.* 289 U. S. 395, 410-411.

The State of Illinois has utterly failed to carry out the Court's order to make adequate provision for obtaining the money needed to effect the prompt completion of the sewage disposal works and complementary facilities. The unexplained and inexcusable default of the State of Illinois in this regard affords no reason or just cause for further delay in the performance of the decree at the expense of the rights of the complainant states and their peoples.

## XII.

## ONE OF THE OBJECTS OF THIS PETITION IS TO OBTAIN AT THE EXPENSE OF RESPONDENTS, ADDITIONAL WATER FROM LAKE MICHIGAN FOR THE GENERATION OF HYDROELECTRIC POWER AT THE SITE OWNED BY THE SANITARY DISTRICT AT LOCKPORT, ILLINOIS, AND AT OTHER SITES OWNED BY THE STATE OF ILLINOIS AND SITUATED BETWEEN LOCKPORT AND STARVED ROCK, ILLINOIS

The purposes of the Sanitary District Canal were and are the disposal of sewage of the Chicago Metropolitan area and the development of profitable water power. This court found that sanitation and power were the purposes for the diversion. *Wisconsin, et al. v. Illinois, et al.*, 278 U. S. 367, 415. Both purposes required as large a diversion as possible.

Petitioner alleges that the object of its request is to obtain a temporary increase in the diversion to aid in the disposal of the sewage of the Chicago metropolitan area pending the completion of sewage disposal works which, with reasonable diligence on the part of petitioners, should have been completed long since. It seems clear that one of the objects of this Application is to obtain additional water from Lake Michigan for the generation of hydroelectric power at the site owned by the Sanitary District of Chicago at Lockport, Illinois, and at other sites owned by the State of Illinois and situated on the so-called Illinois Waterway between Lockport and Starved Rock, Illinois. The additional diversion sought by the Application would increase the value of the electrical energy generated at the

Lockport plant of the Sanitary District of Chicago by approximately $100,000 per annum.

The State of Illinois now has pending before the Federal Power Commission an Application for licenses under the Federal Power Act to develop water power at all of the power sites between Lockport and Starved Rock, Illinois, which include all of the commercial power sites between Lake Michigan and the Mississippi River. The amount of water available for power development along this reach is dependent upon the amount of diversion from Lake Michigan and by means of said diversion is made substantially uniform throughout the year. The hydraulic capacity of the hydroelectric generating machinery which, as disclosed by its Application for license before the Federal Power Commission, the State of Illinois proposes to install greatly exceeds the present direct diversion from Lake Michigan, plus domestic pumpage, plus natural flow, and would be practically useless without a large increase in the present diversion. These declared intentions of the State of Illinois establish a purpose to circumvent the performance of the decree of this Court and the restoration of the just rights of the respondents and their peoples as declared by this Court and an intention also evidenced by the past conduct of the petitioner, and its agent, the Sanitary District, to secure in some way a large permanent diversion for water power at the expense of the rights of the respondents and their peoples.

The generation of hydro-electric power at Lockport and other sites has always been and continues one of the motives for the diversion. *Wisconsin v. Illinois*, 278 U. S. 367, 415.

## XIII

### THE SECRETARY OF WAR HAS NO AUTHORITY TO AUTHORIZE AN INCREASE IN THE ANNUAL AVERAGE DIVERSION ABOVE 1500 CUBIC FEET PER SECOND, IN ADDITION TO DOMESTIC PUMPAGE, TO AID IN DISPOSING OF THE SEWAGE OF THE SANITARY DISTRICT OF CHICAGO OR FOR THE DEVELOPMENT OF WATER POWER.

The petition of the State of Illinois asks the Court whether "the Secretary of War, under existing law, has authority to grant a temporary increase in this diversion if conditions so warrant."

It is clear that a modification of the decree and temporary increase in the diversion from Lake Michigan is sought for the purposes of local sanitation and the development of water power by the State of Illinois. The Secretary of War has no jurisdiction or any statutory or constitutional authority to modify the decree or, quite independently of the decree, to authorize the increased diversion requested by petitioner. This lack of any jurisdiction or authority in the Secretary of War to authorize any diversion for sanitation or water power, the purposes for which the temporary increase are sought, has heretofore been adjudicated in this suit and is *res judicata* of this issue which is now sought to be again raised by petitioner. In *Wisconsin et al. v. Illinois, et al.*, 278 U. S. 367, 418, the Court, in holding that the Secretary of War had no

authority to authorize any diversion whatsoever in the interests of sanitation, said, in part:

> "Merely to aid the District in disposing of its sewage was not a justification, considering the limited scope of the Secretary's authority. He could not make mere local sanitation a basis for a continuing diversion. Accordingly he made the permit of March 3, 1925, both temporary and conditional — temporary in that it was limited in duration and revocable at will, and conditional in that it was made to depend on the adoption and carrying out by the District of other plans for disposing of the sewage."

And again:

> "So, complainants urge that the diversion here is for purposes of sanitation and development of power only, and therefore that it lies outside the power confided by Congress to the Secretary of War. The master says:
>
> "'* * * The purpose of utilizing the flow through the drainage canal to develop power is also undoubtedly present, although subordinated to the exigency of sanitation. So far as the diverted water is used for the development of power, the use is merely incidental. * * *'"

*Wisconsin et al. v. Illinois et al.*, 278 U. S. 367, 415.

This Court then held the Secretary of War had no power to authorize any diversion for power or sanitation purposes. This holding of the Court on this issue is not now open to argument.

## CONCLUSION

Respondents respectfully submit that in view of the foregoing, this court dismiss the petition of the State of Illinois for a modification of paragraph 3 of the decree made and entered in these causes on April 21, 1930 (281 U. S. 696).

Respectfully submitted,

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